

Management Log for Case: 785115-10-**Case Title:****Date:** 01/04/2010**User:**

<u>Log Date</u>	<u>Log Type</u>	<u>Mgmt Log Text</u>
10/31/2009	INVESTIGATIVE ACTIVIT	
11/04/2009	INVESTIGATIVE ACTIVIT	
11/05/2009	INVESTIGATIVE ACTIVIT	
11/07/2009	INVESTIGATIVE ACTIVIT	
11/09/2009	INVESTIGATIVE ACTIVIT	
11/10/2009	INVESTIGATIVE ACTIVIT	
11/12/2009	INVESTIGATIVE ACTIVIT	
11/13/2009	INVESTIGATIVE ACTIVIT	
11/13/2009	ADMINISTRATIVE ACTIV	
11/16/2009	INVESTIGATIVE ACTIVIT	
11/17/2009	INVESTIGATIVE ACTIVIT	
11/18/2009	ADMINISTRATIVE ACTIV	
11/18/2009	INVESTIGATIVE ACTIVIT	
11/19/2009	AUSA/DA CONTACT	
11/19/2009	AUSA/DA CONTACT	
11/19/2009	INVESTIGATIVE ACTIVIT	
11/20/2009	INVESTIGATIVE ACTIVIT	
11/23/2009	INVESTIGATIVE ACTIVIT	
11/23/2009	AUSA/DA CONTACT	
11/24/2009	DIVISION REVIEW	
11/24/2009	INVESTIGATIVE ACTIVIT	Chambers, Patino and Avilla bought f/a's from LW. Obtained 4473's. Attempted to conduct surveillance but subjects left loc prior to agents arrival. Obtained add. of auto shop, Checked Patino's 4473 address but no vehs @loc. Rcvd corrected 4473 from ref 11/22/09 deal via fax.
11/24/2009	INTER AGENCY CONTAC	

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone: (800) [REDACTED] Fax: (800) [REDACTED]

Print Date: [REDACTED]



SUSPECT GUN SUMMARY

Suspect Gun Number: S20090001704

Entered Date: November 25, 2009

[REDACTED]
PHOENIX FD GROUP VII

[REDACTED]
PHOENIX, AZ 85004

Badge No:

Investigation No: 785115-10-[REDACTED]

DEALER INFORMATION

Business Name:

Licensee Name: [REDACTED]

Address: [REDACTED]

GLENDAL, AZ 85302

Phone: (623) [REDACTED] Ext:

FFL Number: [REDACTED]

Invoice #:

INDIVIDUAL INFORMATION

Name: JAIME AVILA JR

Address: [REDACTED]

PHOENIX, AZ 85035

DOB: [REDACTED]

Race: HISPAN
IC

Sex: Male

Height: [REDACTED]

Weight: [REDACTED]

Date: 11/24/2009

ID 1: AZ DRIVER'S LICENSE #: [REDACTED]

ID 2: [REDACTED] #:

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator (FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 5

Manufacturer	Model	Caliber	Serial Number	Type	Importer
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195549	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195544	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386194225	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195542	PISTOL	UNKNOWN IMPORTER
F.N. (FN HERSTAL)	FIVE-SEVEN	57	386195543	PISTOL	UNKNOWN IMPORTER

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone: (800) [REDACTED] Fax: (800) [REDACTED]

Print Date: [REDACTED]



SUSPECT GUN SUMMARY

Suspect Gun Number: S20100000088

Entered Date: January 19, 2010

[REDACTED]
PHOENIX FD GROUP VII

[REDACTED]
PHOENIX, AZ 85004

Badge No:

Investigation No: 785115-10-[REDACTED]

DEALER INFORMATION

Business Name:

Licensee Name: [REDACTED]

Address: [REDACTED]

GLENDAL, AZ 85302

Phone: (623) [REDACTED] Ext:

FFL Number: [REDACTED]

Invoice #:

INDIVIDUAL INFORMATION

Name: JAIME AVILA JR

Address: [REDACTED]

PHOENIX, AZ 85035

DOB: [REDACTED]

Race: HISPAN
IC

Sex: Male

Height:

Weight:

Date: 01/16/2010

ID 1:

#:

ID 2:

#:

NOTICE

The firearm(s) listed below was entered into the Firearms Tracing System as a suspect gun. You have requested NTC maintain a lookout for the firearm(s). If any of the suspect guns in this report are traced by another agency and/or individual, your Division's Firearms Trafficking Coordinator (FTC) will be notified in writing by the NTC. The notification will include the identity of the officer and/or agency requesting the trace. It will be incumbent upon the FTC or yourself to contact the firearms trace requestor. The NTC will not release any information concerning your suspect gun(s).

Weapon Summary

Weapon Count: 3

Manufacturer	Model	Caliber	Serial Number	Type	Importer
ROMARM/CUGIR	WASR-10	762	1983AH3977	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	WASR-10	762	1979IS1530	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT
ROMARM/CUGIR	WASR-10	762	1971CZ3775	RIFLE	CENTURY ARMS INC (CAI), ST. ALBANS, VT

Congress of the United States
Washington, DC 20515

October 20, 2011

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
953 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Mr. Mueller:

The murder of Border Patrol Agent Brian Terry on December 14, 2010, is what motivated brave law enforcement agents from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to risk their careers and blow the whistle on Operation Fast and Furious. The Justice Department's false denials to Congress are what motivated them to speak out and testify publicly. A growing collection of documents and credible testimony has put the lie to those denials. It is in this context and because of this obstruction of our previous inquiries that we are now asking you to provide more than just conclusory statements by your Office of Congressional Affairs regarding the state of the evidence in the investigation of Agent Terry's murder.

Out of deference to the FBI's ongoing criminal inquiry, we have delayed asking the Bureau direct questions about the case for nearly ten months. However, Congress has a right and a duty to conduct oversight of federal law enforcement operations. It is a fundamental aspect of our Constitutional system of checks and balances. Agencies like the FBI can wield tremendous power and influence over individual citizens. With that power and influence comes responsibility, and nothing exempts the Bureau from accountability to Congress as well as to the courts.

While we are sensitive to the issues raised by asking questions about an ongoing case, Congress has frequently judged it necessary and has been successful in obtaining such information. The September 11th attacks, the Anthrax attacks, the sieges at Ruby Ridge and Waco, and ABSCAM are just a few of the most high-profile examples in modern times where Congress sought and obtained information related to ongoing criminal matters.¹ We are not required to wait years for lengthy court proceedings to gather information that we deem necessary to carry out our duties under the Constitution.

As you know, two weapons recovered at the scene of Agent Terry's murder have been traced to Fast and Furious. Yet the FBI has released very little information about the

¹ For additional examples, see generally, CRS Report RL34197, *Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice* (2008).

circumstances surrounding the fatal shooting. Anonymous Justice Department sources initially told the press that the two Fast and Furious guns had been ballistically excluded as the murder weapon and that the murder weapon had not been recovered. However, we obtained a copy of the report, and in actuality, it does not exclude the Fast and Furious guns. Rather, it is inconclusive. So, apparently someone from the Justice Department attempted to deceive the press.

The lack of answers being given to Agent Terry's family about the circumstances surrounding his death and the delay in bringing his murderers to justice only compounds their anguish. After ten months of FBI investigation, Agent Terry's family and the American public deserve to know more about the status of the inquiry, the state of the evidence, and any connections to Operation Fast and Furious.

Although the Justice Department eventually released limited details about the two Fast and Furious weapons at the crime scene through the unsealing of a search warrant affidavit and the indictment, it only did so after the public controversy had erupted and documents describing the weapons and their serial numbers had been attached to Senator Grassley's initial letters asking about Fast and Furious.

Yet neither the search warrant affidavit nor the unsealed indictment describes the total number of weapons recovered at the scene.² The search warrant affidavit merely indicates that "one of the Border Patrol Agents, utilizing thermal binoculars, observed *at least two* of the suspected aliens carrying rifles."³ It further states that when the one defendant in custody was interviewed, he "stated that he was traveling with four individuals" and that "all of the individuals were armed."⁴ As for the indictment, it merely alleges that the defendants "did knowingly use and carry two" assault rifles.⁵ It does not describe how many weapons were recovered by either Border Patrol or FBI authorities who arrived later at the scene.

So, from the limited information officially released about the circumstances, it appears that the illegal aliens who shot at Agent Terry may have been armed with a total of five rifles. And until recent public statements, it was unclear how many guns the FBI had recovered at the scene. According to documents we have obtained, we know that the two Fast and Furious rifles were part of a lot of three, all purchased at the same time over a year earlier. These circumstances naturally raise questions regarding the whereabouts of that third Fast and Furious

² Application and Affidavit for Search Warrant, Dec. 29, 2010, Case Number 10-10251M, D. Ariz. (Attachment 1); Superseding Indictment, Unsealed Apr. 20, 2011, Case Number 10-10251M, D. Ariz. (Attachment 2).

³ Affidavit for Search Warrant, *supra* note 2 (emphasis added).

⁴ *Id.*

⁵ Superseding Indictment, *supra* note 2.

gun, whether the other firearms were also connected to Fast and Furious, and the current location of all the firearms involved.

At Agent Terry's funeral, border patrol agents told his mother that three weapons were recovered at the scene. Recent news reports about taped conversations also indicated there were three weapons involved, although only two appeared to be connected to Fast and Furious.⁶ The conversation between an ATF agent and a cooperating gun dealer is as follows:

Agent: Well, there were two—

Dealer: There were three weapons.

Agent: There was actually three weapons.

Dealer: I know that. Three weapons recovered.

Agent: And, yes, they had the serial numbers for all three.

Dealer: So, that is correct. Is that—

Agent: And two of them came from this store.

Dealer: I understand that, yeah.

Agent: There's an SKS that I don't think came from — it was something else, from Texas or something.

Dealer: No, we're talking about the AKs.

Agent: No, the two AKs came from the store.⁷

On another portion of the recording, the agent claims that neither of the Fast and Furious guns from the cooperating dealer's store was the one that shot Agent Terry. This exchange also suggests the presence of other guns at the scene:

Dealer: [My attorney] was told in no uncertain terms the statement that DoJ said was false because guns [from my store] were part of it. I mean, I didn't even want to go —

⁶ Recording between ATF agent and federal firearms licensee, Mar. 17, 2011.

⁷ *Id.*

Agent: That's true. That's true, and I can tell you that's why he made the statement. The guns from your store were at the scene.

Dealer: Yeah.

Agent: They were not the gun, to the best of anybody's knowledge, that shot the Border Patrol agent.⁸

Additionally, several internal emails between ATF personnel initially indicated confusion over whether there were two or three weapons being traced. Given all these circumstances, it is reasonable to ask the FBI to clarify what it has learned about how many guns were possessed by the illegal aliens shooting at our Border Patrol agents and the current location of each of those firearms.

The FBI briefed our staff on October 5, 2011, on other matters potentially related to Fast and Furious. That briefing was the first time to our knowledge that the FBI asserted that it recovered two, and only two, guns. The Department's public statement on Monday evening that the FBI lab item labeled "K-1" was a blood sample was the first such explanation that we were aware of.

However, given that the ballistics report is inconclusive as to whether or not either Specimen K-2 or K-3 (the Fast and Furious weapons recovered from the scene) killed Agent Terry, we have the following questions:

- 1) Please explain why the ballistics test was inconclusive.
- 2) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was likely the murder weapon?
- 3) Despite the inconclusive ballistics test, are there other indications from the evidence or circumstances that would suggest that one of the Fast and Furious guns recovered at the scene was *not* likely the murder weapon?
- 4) Can the FBI conclusively rule out the possibility that Specimens K-2 or K-3 killed Agent Terry?
- 5) Does the FBI believe that a third weapon killed Agent Terry? If so, what steps has the FBI taken to locate that weapon and what is the status of the FBI's search?

⁸ *Id.*

- 6) How many total weapons does the evidence indicate were in the possession those encountered by Agent Terry's Border Patrol unit?
- 7) How many total shots and of what type does the evidence indicate were fired by those encountered by Agent Terry's Border Patrol unit? How many and of what type were fired?
- 8) What time did the FBI arrive on the scene?
- 9) Which other state, local, or federal agencies were already present when the FBI arrived?
- 10) What time did the first ATF personnel arrive at the scene?
- 11) When and how were the trace requests for weapons recovered at the scene submitted to ATF?
- 12) Has the FBI submitted any other trace requests to ATF in connection with the Terry murder case? If so, please describe the circumstances in detail, providing the serial number and date of each request.
- 13) Has the FBI submitted any trace requests to ATF in any of its other cases where the gun was connected to Fast and Furious? If so, please describe the circumstances in detail, providing the serial number and date of each request.
- 14) How many total suspects does the evidence indicate were encountered by Agent Terry's Border Patrol unit?
- 15) How many of those suspects are currently at large? What steps has the FBI taken to apprehend them and what is the status of the FBI's search?
- 16) According to press reports, three illegal immigrants were taken into custody "near the scene of the shootout" but were later "cleared by federal authorities," released, and deported to Mexico.⁹ Please explain the circumstances of their arrest and why they were released.

In order to fully understand the context and meaning of the ballistics report and the circumstances surrounding the collection of forensic evidence related to Agent Terry's untimely demise, the House Committee subpoena requires production of all documents and communications between and among FBI employees in Arizona and the FBI Laboratory,

⁹ Amanda Lee Myers and Jacques Billeaud, *Man Indicted in Arizona Border Agent's Killing*, ASSOCIATED PRESS, May 6, 2011.

including but not limited to employees in the Firearms/Toolmark Unit, referring or relating to the firearms recovered during the course of the investigation of Brian Terry's death.

Additionally, we now reiterate our previous request made more than three months ago on July 11, 2011, for all documents and communications between and among the following officials relating to Operation Fast and Furious and the investigation into Brian Terry's murder:

- 1) Nathan Gray, Former Special Agent in Charge, Phoenix Field Division
- 2) Annette Bartlett, Assistant Special Agent in Charge, Phoenix Field Division
- 3) Stephen Cocco, Acting Special Agent in Charge, Phoenix Field Division
- 4) Steven Hooper, Assistant Special Agent in Charge, Phoenix Field Division
- 5) John Iannarelli, Assistant Special Agent in Charge, Phoenix Field Division
- 6) John Strong, Assistant Special Agent in Charge, Phoenix Field Division
- 7) David Cuthbertson, Special Agent in Charge, El Paso Field Division
- 8) The Case Agent from the Tucson office in charge of the Brian Terry murder investigation
- 9) Erich Smith, Firearms/Toolmarks Unit

We request that you provide these documents as soon as possible, but by no later than noon on November 2, 2011.

Finally, this investigation will be more productive and beneficial for both the Bureau and Congress if there is mutual respect for the legitimate roles and responsibilities of both institutions, consistent with the principle of comity between our separate branches of government. That sort of respect is not fostered by the presumption that every question or document request is equivalent to an "accusation."

It is not our goal, intent, or Constitutional function to make accusations or attempt to prove them. Yet that presumption has been implicit in interactions with your staff and in official public statements from the Justice Department. For example, a spokesperson earlier this week dismissed any questions about these matters as a "false accusation" that "maligins the dedicated agents investigating the murder of Agent Terry." Nothing could be further from the truth. Our oversight efforts seek to ensure public confidence in federal law enforcement by providing an independent check on its operations in a matter of great controversy, such as this one. So, rather

than presuming the worst about our motives and interpreting our questions as accusations, it would be more productive to simply answer them.

If you have any questions regarding these requests, please contact Tristan Leavitt in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner of Chairman Issa's Committee staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives



Charles E. Grassley, Ranking Member
Committee on the Judiciary
United States Senate

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate

Attachment 1

UNITED STATES DISTRICT COURT
District of Arizona

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

SEARCH WARRANT

Manuel Osorio-Arellanes (head hairs)

Case Number:

10-10251M

TO: Special Agent (SA) Scott Hunter/FBI and any Authorized Officer of the United States
Affidavit having been made before me by affiant, Special Agent (SA) Scott Hunter, who has reason to believe that / X
/ on the person of or / / / on the premises known as:

Manuel Osorio-Arellanes (head hairs)

in the District of Arizona there is now concealed a certain person or property namely (describe the person or property)

SEE AFFIDAVIT attached hereto and incorporated herein

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

XX property that constitutes evidence of the commission of a criminal offense;
___ contraband, the fruits of crime, or things otherwise criminally possessed;
___ property designed or intended for use or which is probable cause, or who is unlawfully restrained
___ a person for whose arrest there is probable cause, or who is unlawfully restrained.

in violation of Title 18, United States Code, Section 1114.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

Jan. 2, 2011
Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime 6:00 a.m. to 10:00 p.m.) (~~at any time in the day or night as I find reasonable cause has been established~~) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to D. THOMAS FERRARO as required by law.

United States Judge or Magistrate Judge

Dec 29, 2010 at 1:03 p.m.
Date and Time Issued

U.S. MAGISTRATE JUDGE
D. THOMAS FERRARO

Name and Title of Judicial Officer

at

City and State

Signature of Judicial Officer

RETURN

DATE WARRANT RECEIVED

12/29/10

DATE AND TIME WARRANT EXECUTED

1/4/11 1030am

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

MANUEL OSORIO-ARELLANES

INVENTORY MADE IN THE PRESENCE OF

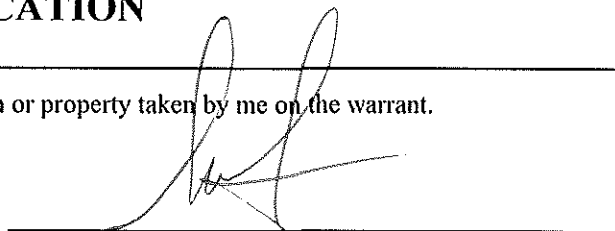
SA JON EDWARDS & MANUEL OSORIO-ARELLANES

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

- 1 - ENVELOPE CONTAINING COMBED HAIRS
- 1 - ENVELOPE CONTAINING PULLED HAIRS

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by me on the warrant.



Subscribed, sworn to, and returned before me this date.



U.S. JUDGE OR MAGISTRATE JUDGE

DATE

1/5/11

UNITED STATES DISTRICT COURT
District of Arizona

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

Manuel Osorio-Arellanes (head hairs)

Case Number:

10-10251M

I, Special Agent Scott Hunter, being duly sworn depose and say:

I am a Special Agent (SA) Scott Hunter with the Federal Bureau of Investigation and have reason to believe that /X/ on the person of or / / on the premises known as (name, description and/or location)

Manuel Osorio-Arellanes (head hairs)

in the District of Arizona there is now concealed a certain person or property, namely, (describe the person or property)

SEE AFFIDAVIT attached hereto and incorporated herein

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)

XX property that constitutes evidence of the commission of a criminal offense;

 contraband, the fruits of crime, or things otherwise criminally possessed;

 property designed or intended for use or which is probable cause, or who is unlawfully restrained

 a person for whose arrest there is probable cause, or who is unlawfully restrained..

in violation of Title 18, United States Code, Section 1114. The facts to support the issuance of a Search Warrant are as follows:

See attached Affidavit incorporated by reference herein

Continued on the attached sheet and made a part hereof. X Yes No

Reviewed by AUSA

[Signature]

Signature of Affiant

Sworn to before me, and subscribed in my presence

Date

Dec 29, 2010

at

City and State

U.S. MAGISTRATE JUDGE
D. THOMAS FERRARO

Name and Title of Judicial Officer

Signature of Judicial Officer

Affidavit

I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI). I have been a Special Agent since January 1999. I am currently assigned to a Violent Crime squad, with the majority of my cases being on the Indian Reservation investigations.

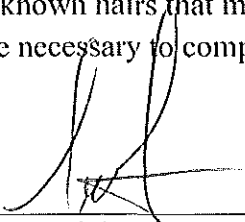
The statements contained in this affidavit are based on information provided by employees of the FBI and other law enforcement agencies, and on my experience and background as a Special Agent of the FBI. I have not included each and every fact known to me concerning this investigation.

On 12/14/2010, at approximately 11:15 pm, four United States Border Patrol Agents attempted to apprehend at least five suspected illegal aliens in Peck Canyon, which is located in Rio Rico, Arizona. One of the Border Patrol Agents, utilizing thermal binoculars, observed at least two of the suspected aliens carrying rifles. When the group of suspected aliens was near the Border Patrol Agents' location, at least one Border Patrol Agent identified himself as police and ordered the suspected aliens to drop their weapons. When the suspected aliens did not drop their weapons, two Border Patrol Agents deployed "less than lethal" bean bags at the suspected aliens. At this time, at least one of the suspected aliens fired at the Border Patrol Agents. Two Border Patrol Agents returned fire, one with his long gun, and one with his pistol.

Border Patrol Agent Brian Terry was shot with one bullet, and died shortly after. One of the suspected illegal aliens, later identified as Manuel Osorio-Arellanes, was also shot. On 12/16/2010, Osorio-Arellanes was interviewed by FBI Agents. Osorio-Arellanes was read his Miranda rights before he was interviewed, and agreed to talk to the FBI Agents without an attorney preset. Osorio-Arellanes stated that he was traveling with four individuals. All of the individuals were armed, to include Osorio-Arellanes. Osorio-Arellanes stated that he had raised his weapon towards the Border Patrol Agents, but he did not fire because he had realized that they were Border Patrol Agents. At this time, he was shot.

Some of the evidence collected at the shooting crime scene included five backpacks, three gloves, two sweatshirts, a pullover, a jacket, a knit hat, a baseball cap, and a razor. The FBI Laboratory will conduct trace examinations for hairs and fibers on these items. The trace examiners need known hairs to compare to any unknown hairs that may be found on these items. Head hairs taken from Osorio-Arellanes are necessary to compare with any hairs that may be found on the clothing items.

by combing and pulling



Scott Hunter, Special Agent
Federal Bureau of Investigation

10-10251M

Sworn to and subscribed before me this 29th day of December, 2010, in Tucson, Arizona



Hon. D. Thomas Ferraro
United States Magistrate Judge

Attachment 2

1 DENNIS K. BURKE
United States Attorney
2 District of Arizona
JESSE FIGUEROA
3 Assistant United States Attorney
LIZA M. GRANOFF
4 Assistant United States Attorney
United States Courthouse
5 405 W. Congress Street, Suite 4800
Tucson, Arizona 85701
6 Telephone: 520-620-7300
Email: jesse.figueroa@usdoj.gov
7 Email: liza.granoff@usdoj.gov
Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 (1) Manuel Osorio-Arellanes;
14 aka Manuel Arellanes,
15 aka "Paye,"
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 Defendants.

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CR-11-0150-TUC-DCB-JCG

SUPERSEDING INDICTMENT

Violations:

VICTIM CASE

18 U.S.C. § 1111 and § 1114 (Second Degree Murder);

18 U.S.C. § 371 (Conspiracy to Assault a Federal Officer);

18 U.S.C. § 924(c) (Use and Carrying a Firearm in Furtherance of a Crime of Violence);

18 U.S.C. § 111 (Assault on a Federal Officer);

18 U.S.C. § 922(g)(5)(A) (Possession of a Firearm by a Prohibited Person);

18 U.S.C. § 922(g)(1) (Possession of a Firearm by a Prohibited Person); and

8 U.S.C. § 8 U.S.C. § 1326 (a) and (enhanced by 8 U.S.C. § 1326(b)(1) and (b)(2) (Re-Entry After Deportation)

THE GRAND JURY CHARGES:

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COUNT ONE
SECOND DEGREE MURDER

On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] [REDACTED] did unlawfully kill with malice aforethought United States Border Patrol Agent Brian Terry while Agent Terry was engaged in or on account of the performance of his official duties, in violation of Title 18, United States Code, Sections 1111 and 1114.

COUNT TWO
CONSPIRACY TO ASSAULT A FEDERAL OFFICER

From a time unknown to on or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] [REDACTED], named herein as defendants and co-conspirators, did knowingly and intentionally combine, conspire, confederate and agree with each other and other persons known and unknown to the Grand Jury, to commit an assault, that is, Assault of a Federal Officer, to wit: United States Border Patrol Agents Brian Terry, Timothy Keller, Gabriel Fragoza and William Castano, officers of the United States, while said officers were engaged in and on account of the performance of their official duties, in violation of Title 18, United States Code, Sections 111(a) and 111(b).

OBJECT AND MEANS

1. It was an object of the conspiracy that one or more of the co-conspirators would intentionally and forcibly assault, resist, oppose, impede, intimidate and interfere with any person and any officer or employee of the United States while such person was engaged in or on account of the performance of official duties.

2. To accomplish an object of the conspiracy, one or more of the co-conspirators would intentionally and forcibly assault resist, oppose, impede, intimidate and interfere with any person and any officer or employee of the United States while such person was engaged in or on account of the performance of official duties while at least two of the defendants were each armed with deadly weapons, to wit: assault rifles, in violation of Title 18, United States Code, Sections 111(a) and 111(b).

OVERT ACTS

3. In furtherance of the conspiracy, one or more of the co-conspirators committed, in the District of Arizona and elsewhere, overt acts including, but not limited to, those acts described more fully below.

4. On or about December 14, 2010:

a. Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
[REDACTED] and
others traveled together to the area of Mesquite Seep;

b. Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] and [REDACTED] others were patrolling the area in single file formation at or near Mesquite Seep;

c. At least two of the defendants possessed assault rifles;

d. At least two of the defendants carried the assault rifles at the "ready" position when they encountered the Border Patrol agents;

e. At least two of the defendants shot at the Border Patrol agents after the agents had identified themselves as police;

All in violation of Title 18, United States Code, Section 371.

1 COUNT THREE
2 USING AND CARRYING A FIREARM IN FURTHERANCE OF A CRIME
3 OF VIOLENCE

4 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
5 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED]
6 [REDACTED], during and in relation to a crime
7 of violence, to wit: Conspiracy to Assault a Federal Officer as charged in Count Two of this
8 indictment, in violation of Title 18, United States Code, Sections 111(a), 111(b), and 371,
9 did knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-
10 10/63, and did possess those firearms and further brandished the firearms in furtherance of
11 such a crime, in violation of Title 18, United States Code, Section 924(c).

12 COUNT FOUR
13 ASSAULT ON A FEDERAL OFFICER

14 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
15 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye" did intentionally and forcibly
16 assault, resist, oppose, impede, intimidate and interfere with United States Border Patrol
17 Agent Timothy Keller, officer of the United States, with a deadly or dangerous weapon, to
18 wit: an assault rifle, while said officer was engaged in and on account of the performance of
19 his official duties, in violation of Title 18, United States Code, Sections 111(a) and 111(b).

20 COUNT FIVE
21 ASSAULT ON A FEDERAL OFFICER

22 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
23 [REDACTED] did intentionally and
24 forcibly assault, resist, oppose, impede, intimidate and interfere with United States Border
25 Patrol Agents Brian Terry, Timothy Keller, Gabriel Fragoza, and William Castano, officers
26 of the United States, with a deadly or dangerous weapon, to wit: an assault rifle, while said

1 officers were engaged in and on account of the performance of their official duties, in
2 violation of Title 18, United States Code, Sections 111(a) and 111(b).

3 **COUNT SIX**
4 **ASSAULT ON A FEDERAL OFFICER**

5 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
6 [REDACTED] did intentionally and forcibly assault, resist, oppose, impede, intimidate
7 and interfere with United States Border Patrol Agents Brian Terry, Timothy Keller, Gabriel
8 Fragoza, and William Castano, officers of the United States, with a deadly or dangerous
9 weapon, to wit: an assault rifle, while said officers were engaged in and on account of the
10 performance of their official duties, in violation of Title 18, United States Code, Sections
11 111(a) and 111(b).

12 **COUNT SEVEN**
13 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
14 **A CRIME OF VIOLENCE**

15 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
16 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," during and in relation to a crime
17 of violence, to wit: Assault on a Federal Officer, as charged in Count Four of this
18 indictment, in violation of Title 18, United States Code, Sections, 111(a) and 111(b), did
19 knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-10/63,
20 and did possess those firearms and further brandished the firearms in furtherance of such a
21 crime, in violation of Title 18, United States Code, Section 924(c).

22 **COUNT EIGHT**
23 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
24 **A CRIME OF VIOLENCE**

25 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
26 [REDACTED], during and in relation to a
27 crime of violence, to wit: Assault on a Federal Officer, as charged in Count Five of this

1 indictment, in violation of Title 18, United States Code, Sections, 111(a) and 111(b), did
2 knowingly use and carry two 7.62 x 39mm Romanian assault rifles, Model GP WASR-10/63,
3 and did possess those firearms and further brandished the firearms in furtherance of such a
4 crime, in violation of Title 18, United States Code, Section 924(c).

5 **COUNT NINE**
6 **USING AND CARRYING A FIREARM IN FURTHERANCE OF**
7 **A CRIME OF VIOLENCE**

8 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
9 [REDACTED] during and in relation to a crime of violence, to wit: Assault on a Federal
10 Officer, as charged in Count Six of this indictment, in violation of Title 18, United States
11 Code, Sections, 111(a) and 111(b), did knowingly use and carry two 7.62 x 39mm Romanian
12 assault rifles, Model GP WASR-10/63, and did possess those firearms and further brandished
13 the firearms in furtherance of such a crime, in violation of Title 18, United States Code,
14 Section 924(c).

15 **COUNT TEN**
16 **POSSESSION OF A FIREARM BY A PROHIBITED PERSON**

17 On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona,
18 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," an alien who was illegally and
19 unlawfully in the United States, did knowingly possess a firearm, to wit: a 7.62 x 39mm
20 Romanian assault rifle, Model GP WASR-10/63, bearing serial number 1971CZ3775 and
21 twenty-five 7.62 x 39mm rounds of ammunition, said firearm and ammunition being in and
22 affecting commerce in that they were previously shipped and transported into the State of
23 Arizona from another state or foreign country, in violation of Title 18, United States Code,
24 Sections 922(g)(5)(A) and 924(a)(2).

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COUNT ELEVEN
POSSESSION OF A FIREARM BY A PROHIBITED PERSON

On or about December 14, 2010, at or near Mesquite Seep, in the District of Arizona, Manuel Osorio-Arellanes, aka Manuel Arellanes, having been convicted of the felony crime of Aggravated Assault on December 1, 2006 in Maricopa County, Arizona did knowingly possess a firearm, to wit: a 7.62 x 39mm Romanian assault rifle, Model GP WASR-10/63, bearing serial number 1971CZ3775 and twenty-five 7.62 x 39mm rounds of ammunition, said firearm and ammunition being in and affecting commerce in that they were previously shipped and transported into the State of Arizona from another state or foreign country, in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a)(2).

FORFEITURE ALLEGATION

Upon conviction of Counts One through Eleven of this Superseding Indictment, the defendants, Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," [REDACTED] shall forfeit to the United States pursuant to Title 18, United States Code, Section 924(d) and Title 28, United States Code, Section 2461(c), any firearms and ammunition involved in the commission of the offense, including, but not limited to: two 7.62 x 39 mm Romanian assault rifles, model GP WASR 10/63, bearing serial numbers 1971CZ3775 and 1983AH3977, and seventy-five 7.62 x 39 mm rounds of ammunition.

If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or

1 e. has been commingled with other property which cannot be divided
2 without difficulty,
3 it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by Title
4 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said
5 defendants up to the value of the above forfeitable property, including, but not limited to, all
6 property, both real and personal, owned by the defendants.

7 All pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c).

8 **COUNT TWELVE**
9 **RE-ENTRY OF A DEPORTED ALIEN**

10 On or about December 14, 2010, at or near Nogales, in the District of Arizona,
11 Manuel Osorio-Arellanes aka Manuel Arellanes aka "Paye," an alien, entered and was found
12 in the United States of America after having been denied admission, excluded, deported, and
13 removed therefrom at or near Nogales, Arizona on or about June 14, 2010, and not having
14 obtained the express consent of the Attorney General or the Secretary of the Department of
15 Homeland Security to reapply for admission thereto, in violation of Title 8, United States
16 Code, Section 1326, enhanced by Title 8, United States Code, Section 1326(b)(1).

17 **COUNT THIRTEEN**
18 **RE-ENTRY OF A DEPORTED ALIEN**

19 On or about December 14, 2010, at or near Nogales, in the District of Arizona, [REDACTED]
20 [REDACTED] an alien, entered and was found
21 in the United States of America after having been denied admission, excluded, deported, and
22 removed therefrom at or near Nogales, Arizona on or about February 25, 2010, and not
23 having obtained the express consent of the Attorney General or the Secretary of the
24 Department of Homeland Security to reapply for admission thereto, in violation of Title 8,
25 United States Code, Section 1326, enhanced by Title 8, United States Code, Section
26 1326(b)(2).

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DENNIS K. BURKE
United States Attorney
District of Arizona

Presio

APR 20 2011

REDACTED FOR
PUBLIC DISCLOSURE